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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,663	02/08/2002	Colin Dunlop	GRIHAC P38AUS	8376
20210	7590	09/22/2006	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			FOREMAN, JONATHAN M	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,663

Applicant(s)

DUNLOP, COLIN

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 101-166 is/are pending in the application.
- 4a) Of the above claim(s) 139-159, 165 and 166 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 101-114, 116-132, 134, 135, 137, 138 and 160-164 is/are rejected.
- 7) ☒ Claim(s) 115, 133 and 136 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Embodiment I in the reply filed on 7/3/06 is acknowledged. The traversal is on the ground(s) that Embodiments I and II are of a single inventive concept. This is not found persuasive because Embodiments I and II are not disclosed as capable of being used together or being obvious in view of one another. Furthermore, Embodiments I and II have different modes of operation and effects.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 137 and 138 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 137 and 138, a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite under 35 U.S.C. 112, second paragraph. In *Ex parte Lyell*, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990), a claim directed to an automatic transmission workstand and the method steps of using it was held to be ambiguous and properly rejected under 35 U.S.C. 112, second paragraph. See MPEP 2173.05(p).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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Claims 137 and 138 are rejected under 35 U.S.C. 101 based on the theory that the claim is directed to neither a “process” nor a “machine,” but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only. *Id.* at 1551. See MPEP 2173.05(p).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 119, 121, 123 – 125, 129, 132, 134, 161 and 163 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,448,996 to Bellin et al.

In regards to claims 119, 121, 123 – 125, 129, 132, 134, 161 and 163, Bellin et al. discloses a sensor arrangement which is arranged to detect motion of the head, limbs and trunk of a patient, and respiratory motion of the patient and produce a motion signal in response to the motion, and a control means arrange to process signals received from the sensor arrangement and analyze the motion signal to determine the rate of the motion signal, and to provide an alarm (Col. 2, lines 57 – 59) should the detected motion be indicative of patient arousal. The sensor arrangement includes a sensor for measuring bodily motion (Col. 2, lines 27 – 33) and a sensor for measuring respiratory

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motion (Col. 2, lines 19 – 26). The motion signal includes a first motion signal generated from the head, limb, trunk motion and a second signal generated from the respiratory motion. The control means is arranged to determine if the rate of the motion signal increases beyond a predetermined threshold (Col. 4, line 51 – Col. 5, line 2). The sensor arrangement includes a pad on which the patient lies (Col. 4, lines 14 – 26). The control means includes a default setting for the predetermined threshold. Bellin et al. discloses controlling a peripheral device depending upon the motion of the patient (Col. 3, lines 34 – 40). The control means is arranged to monitor for an increase in motion over a baseline rate of motion, wherein the increase in motion may be due to one or both of bodily motion and respiratory motion (Col. 4, line 51 – Col. 5, line 2).

7. Claims 101 – 109, 116 – 130, 132, 134, 135, 137, 138 and 160 - 164 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 5,846,206 to Bader.

In regards to claims 101 – 109, 116 – 130, 132, 134, 135, 137, 138 and 160 – 164, Bader discloses an apparatus and method of monitoring a patient including providing a sensor arrangement which is arranged to detect motion of the head, limbs and trunk of a patient, and respiratory motion of the patient and produce a motion signal in response to the motion (Col. 1, lines 28 – 48); monitoring the motion signal; analyzing the motion signal to determine the rate of the motion signal and determine whether the rate of the motion signal is indicative of patient arousal (Col. 1, lines 39 – 53), and providing an alarm should the motion be indicative of arousal (Col. 1, lines 54 – 55). The bodily motion and the respiratory motion are monitored by the same sensor arrangement (Col. 3, lines 35 – 37). The bodily motion and the respiratory motion are monitored by separate sensor arrangements (Col. 3, lines 45 – 48). The motion signal is generated from a combination of bodily motion and respiratory motion. The motion signal includes a first signal generated from bodily motion and a second signal generated from respiratory motion. The sensor arrangement includes a

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pad on which the patient lies (Col. 3, lines 26 – 31). The alarm is provided should the motion cease to be detected (Col. 4, lines 20 – 21). An alarm is provided if the rate of the motion signal increases beyond a predetermined threshold (Col. 3, line 66 – Col. 7, line 6). The patient is a human. A predetermined threshold is set above an assessed baseline motion rate. The rate of motion is analyzed over a period of time. Bader discloses monitoring a patient recovering from a medical procedure (Col. 2, lines 64 – 68).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 110 – 113 and 131 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,846,206 to Bader in view of US Patent No. 4,969,459 to Gusakov.

In regards to claims 110 – 113 and 131, Bader fails to disclose a temperature sensor being provided to monitor the temperature of the patient and to provide an alarm should the temperature rise above or below predetermined values. Gusakov discloses monitoring a patient under medical care having a control means arranged to receive input from a temperature sensor proximate a patient sensing the body temperature of a patient and to provide an alarm if the temperature goes above or below a predetermined threshold (Col. 2, line 43 – Col. 3, line 10). It would have been obvious to one having ordinary skill in the art to modify the method and device as disclosed by Bader to include the capabilities of temperature monitoring and alarm notification as taught by Gusakov in order to alert a caregiver that a patient's body temperature is no longer in a normal range.

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10. Claim 114 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,846,206 to Bader.

Although the method as disclosed by Bader is directed to a human animal, it would have been obvious to one having ordinary skill in the art at the time the invention was made to monitor a nonhuman animal if desired in that a correlation between wakefulness and bodily and respiratory motion exists in a nonhuman animal and the device and method as disclosed by Bader is capable of monitoring that correlation.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

12. Claims 115, 133 and 136 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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